SUPREME COURT, U. S.

No. 89

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

GLORIA STOLLAR,

Petitioner,

vs.

RICHARD B. OGILVIE, Sheriff of Cook County, Illinois,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois.

PETITION FOR WRIT OF CERTIORARI

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INDEX

	PAGE
Opinion Below	2
Jurisdiction	2
Question Presented	2
Statement of the Case	2
Reasons for Granting Writ	4
Conclusion	6
Appendix A	App. 1
Appendix B	App. 3
Appendix C	App. 8
Appendix D	App. 12

CITATIONS OF AUTHORITIES

Cases

PAGE

Cheff v. Schnackenburg, 384 U.S. 373, 86 S.Ct. 1523 16 L.Ed. 2d 629 5

Douglas v. Alabama, 380 U.S. 415, 85 S.Ct. 1074, 13 L.Ed. 2d 934 4

Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 4

Griffin v. Illinois, 351 U.S. 12, 17, 76 S.Ct. 585, 590, 100 L.Ed. 891 6

Klopfer v. North Carolina —— U.S. ——, 87 S.Ct. 988, —— L.Ed. 2d —— 4

Pointer v. Texas, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed. 2d 923 4

Shillitani v. United States, 384 U.S. 364, 86 S.Ct. 1531, 16 L.Ed. 2d 622 5

United States v. Barnett, 376 U.S. 681, 84 S.Ct. 984, 12 L.Ed. 2d 23 ..... 3, 5

Constitutional Provisions

United States Constitution

Sixth Amendment 4, 5

Fourteenth Amendment 4, 5, 6

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PETITION FOR WRIT OF CERTIORARI

GLORIA STOLLAR, Petitioner herein, prays that a wirt of certiorari issue to review the judgment of the Supreme Court of Illinois entered in the above entitled cause on November 14, 1966.

OPINION BELOW

The opinion of the Supreme Court of Illinois is reported at 36 Ill.2d 261, 222 N.E.2d 496 and is printed in Appendix A hereto, *infra*, App. p. 1

JURISDICTION

The judgment of the Supreme Court of Illinois was entered on November 14, 1966. A timely petition for rehearing was denied on January 17, 1967. The jurisdiction of this court is invoked under Title 28, U.S.C., §1257(3).

QUESTIONS PRESENTED

1. Whether the Sixth Amendment right to trial by jury is applicable to the States through the Fourteenth Amendment and if so, does the Sixth Amendment right to trial by jury apply to cases of contempt of court.

2. Whether the denial of the right to trial by jury to one charged with contempt of court for conduct which also is a felony under the applicable State's statutes, constitutes a denial of the equal protection of the laws contrary to the Fourteenth Amendment of the Constitution of the United States where the contemnor would have been entitled to a jury trial had the State chosen to proceed by way of indictment for the felony rather than citation for contempt.

STATEMENT OF THE CASE

The petitioner was convicted of contempt of court by the Probate Court of Cook County and sentenced to imprisonment in the Cook County Jail for a term of eighteen months. Petitioner was the guardian of the estate of petitioner's daughter and the alleged contemptuous con-

duct was the conversion of monies of said estate and the filing of false inventories and accounts. The facts are essentially contained in the opinion of the Supreme Court of Illinois which affirmed the contempt conviction and which is reported at 31 Ill.2d 154, 201 N.E. 2d 97 and which is appended hereto as Appendix B. This court denied certiorari, 380 U.S. 912, 85 S.Ct. 898, 13 L.Ed.2d 798. Thereafter, petitioner filed a petition for a writ of habeas corpus in the Circuit Court of Cook County alleging in essence that the Sixth Amendment right to trial by jury is applicable to the States and that under the dictum of *United States* v. *Barnett,* 376 U.S. 681, 84 S.Ct. 984, 12 L.Ed.2d 23, so much of her sentence as exceeded six months was void.

The Respondent Sheriff filed a motion to dismiss which was granted. The complete proceedings in the trial court which consists of the petition for habeas corpus, the motion to dismiss and the order of dismissal were reproduced at pages 4, 5, 5 and 7 of the Appellant's brief in the Supreme Court of Illinois in lieu of an Abstract of Record and are appended hereto as Appendix C.

An appeal from the order of dismissal was taken to the Supreme Court of Illinois which court affirmed the judgment of dismissal in a judgment order which is appended hereto as Appendix D. Although the constitutional questions involved herein were presented to the Supreme Court of Illinois in the briefs and petition for rehearing, that court ignored them and based its decision upon the case of *People* v. *Bloom,* 35 Ill. 2d 255, 220 N.E.2d 475, which case is now pending before this court on petition for certiorari as Case No. 1070, October Term, 1966.

REASONS FOR GRANTING WRIT

1. This case presents first the questions of whether the Sixth Amendment right to trial by jury is applicable to the States and if so, is it applicable to cases of criminal contempt.

The provisions of the Sixth Amendment concerning right to counsel were made applicable to the States in *Gideon* v. *Wainwright,* 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799. The confrontation clause of that amendment was made applicable to the States in *Pointer* v. *Texas,* 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923, and *Douglas* v. *Alabama,* 380 U.S. 415, 85 S.Ct. 1074, 13 L.Ed.2d 934. In *Klopfer* v. *North Carolina* ..... U.S. ....., 87 S.Ct. 988, ... L.Ed.2d ....., the right to speedy trial secured by the Sixth Amendment was made applicable to the States through the Fourteenth Amendment.

The reasoning behind each of those cases is that the provision of the Sixth Amendment therein considered is a fundamental right essential to a fair trial. That trial by jury is also an essential of a fair trial can no longer be doubted. By long established usage in the courts of the United States and the various states, the right of trial by jury has become so fundamental as to constitute an essential attribute of a fair and impartial trial.

Klopfer is most applicable here for the speedy trial provision of the Sixth Amendment cannot be divorced from the jury trial provision. The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed * * *.

It must be noted that the Sixth Amendment provision considered in Klopfer gives an accused not the right to a speedy trial but a speedy, public *jury* trial. No other construction is possible which does not strain the plain meaning of the words of our constitution.

Having determined that the Sixth Amendment right to trial by jury is applicable to the State, we must now turn to the question of whether it is applicable to the cases of criminal contempt. This being a petition for a writ of certiorari, we deem it unnecessary to go into the extended arguments on the merits of this question of which this court has been made well aware in the cases of *United States* v. *Barnett,* 376 U.S. 681, 84 S.Ct. 984, 12 L.Ed.2d 23; *Cheff* v. *Schnackenburg,* 384 U.S. 373, 86 S.Ct. 1523 16 L.Ed.2d 629 and *Shillitani* v. *United States,* 384 U.S. 364, 86 S.Ct. 1531, 16 L.Ed.2d 622. Nor do we deem it necessary to convince the court of the importance of the question for again we may assume from the opinions in the above cited cases that the court is cognizant of the significance of the problem. We need only add that as may be seen from this case and the *Bloom* case, unless action is taken by this court to prevent the prosecution of crime as criminal contempt or at least to prevent the lengthy sentences imposed, the States, wherever possible, will resort to contempt proceedings in order to assure speedy convictions unfettered by the need for convincing twelve citizens of the community of the guilt of the accused.

2. As significant as the questions above posed are, and as convinced of the rightness of our position as we are, there is nevertheless, a third way which we submit to this court.

This is the way of equal protection under the Fourteenth Amendment.

The conduct of the petitioner complained of could have been prosecuted as embezzlement, larceny by bailee, fraud or perjury under the then existing criminal laws of the State of Illinois. Nevertheless, rather than proceeding by way of indictment upon which the petitioner would have been able to assert her rights as an accused, the State chose to proceed by way of an action for contempt under which a sentence longer than the minimum for any of the felonies was imposed and in which the most important right of trial by jury was to her denied.

Such invidious discrimination against the petitioner cannot be allowed. "Both equal protection and due process emphasize the central aim of our entire judicial system—all people charged with crime must so far as the law is concerned, 'stand on an equality before the bar of justice in every court.' *Chambers* v. *Florida,* 309 U.S. 227, 241, 60 S.Ct. 472, 479, 84 L.Ed. 716." *Griffin* v. *Illinois,* 351 U.S. 12, 17, 76 S.Ct. 585, 590, 100 L.Ed. 891. Because of the failure of the courts of Illinois to permit the petitioner to stand on an equality with all other persons charged with a serious offense, she was denied the equal protection of the laws and her conviction is void.

CONCLUSION.

For the above and foregoing reasons, a writ of certiorari ought to issue to review the judgment of the Supreme Court of Illinois in this case.

Respectfully submitted,

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JASON ERNEST BELLOWS
SHERMAN C. MAGIDSON
On the brief.

APPENDIX A

OPINION OF THE SUPREME COURT OF ILLINOIS IN THIS CASE

The People *ex rel.* Gloria Stollar, Appellant, v. Richard B. Ogilvie, Sheriff, Appellee.

MR. JUSTICE UNDERWOOD delivered the opinion of the court:

Gloria Stollar was found guilty of contempt of court in the former probate court of Cook County and sentenced to imprisonment in the county jail for a term of 18 months. No request was made for trial by jury. That judgment was affirmed by this court. (*People* v. *Stollar,* 31 Ill.2d 154.) Subsequently, she filed a petition for a writ of *habeas corpus* in the circut court of Cook County which, on motion of respondent, was dismissed. An appeal from that dismissal comes directly here. Ill. Const. art. VI, sec. 5, our Rule 28—1.

The sole question presented for our consideration is whether there exists a constitutional right to trial by jury in a criminal contempt case, particularly where the ultimate penalty imposed may be greater than one year's imprisonment.

We have only last term, in *People* v. *Bloom,* 35 Ill.2d 255, reaffirmed our theretofore consistently maintained position that the right to trial by jury is not available in a proceeding for criminal contempt. We noted that a criminal contempt is an offense against the court as an organ of public justice and the necessity for a summary proceeding for punishment of such offenses is essential to performance of the judicial function. We reviewed at some length the applicable law in this area and stated that "* * * the exercise of summary contempt power is not restricted to

offenses that may be classified as 'trivial' or 'petty' but applies as well—perhaps its exercise is even more important—where the offense is a serious one. (*United States* v. *Barnett*, 376 U.S. 681, 12 L.Ed. 2d 23.) Since there now exists a right of review in contempt proceedings, adequate protection is afforded against errors and abuses in a trial before the judge."

We are mindful of the *dictum* in *Barnett* indicating that some of the members of the United States Supreme Court "are of the view that, without regard to the seriousness of the offense, punishment [of contempt of court] by summary trial without a jury would be constitutionally limited to that penalty provided for petty offenses" (376 U.S. 681, f.n. 12, 12 L.Ed. 2d 23, 31, 84 S.Ct. 984, 991-92,) and are also cognizant of the fact that the United States Supreme Court, acting under its supervisory power over the lower Federal courts, has ruled that "* * * sentences exceeding six months for criminal contempt may not be imposed by federal courts unless a jury trial has been received or waived.'" (*Cheff* v. *Schnackenberg*, 384 U.S. 373, 16 L.Ed 2d 629, 634, 86 S. Ct. 1523, 1526.) Moreover, at least two justices of that court are of the opinion that trial by jury is required in all criminal contempt cases before punishment may be imposed. (*Cheff* v. *Schnackenberg*, 384 U.S. 373, 86 S. Ct. 1523, 1526, dissenting opinion of Mr. Justice Douglas.) However, we are not persuaded that it is either necessary or desirable to require trial by jury in criminal contempt cases and thus alter the existing law of this State. We therefore adhere to the principles recently announced in Bloom.

The judgment of the circuit court of Cook County is accordingly affirmed.

Judgment affirmed.

APPENDIX B

OPINION OF THE SUPREME COURT OF ILLINOIS IN PRIOR CASE

The People of the State of Illinois, Defendant in Error, v. Gloria Stollar, Plaintiff in Error.

Mr. JUSTICE SCHAEFER delivered the opinion of the court:

This is a writ of error to review a judgment of the probate court of Cook County which found the respondent, Gloria Stollar, guilty of contempt of court and sentenced her to imprisonment in the county jail for 18 months. The respondent does not challenge the sufficiency of the proof to establish her guilt, but contends that her constitutional rights were violated because the trial court erred in failing to conduct a hearing to determine her sanity, because she was induced by promises of leniency to admit the charges made against her, and because the request of her attorney for a continuance was denied. She also contends that the sentence was excessive upon the facts, and that it exceeded the permissible statutory maximum.

Harry Stollar, the respondent's husband, died May 9, 1959. He left the bulk of his estate to their daughter, Jacqueline, who was then five years old. The respondent was appointed guardian of her daughter's estate. On July 15, 1959, she filed her inventory as guardian, showing assets in the form of cash in the sum of $47,784.90. Of this amount, $81.09 remained on July 13, 1962. In addition, she received the proceeds of two insurance policies payable to Jacqueline in the total sum of $24,296.05, which were not included in the inventory that she filed as guardian. The bank account in which she deposited this amount was closed on June 8, 1960, by the last withdrawal in the sum of $5100.

On September 24, 1962, the attorney who represented the respondent as guardian filed a petition reciting that she had refused to cooperate with him, alleging his belief that she had withdrawn considerable moneys from the minor's estate over and above the amounts authorized by orders of the court, and asking leave to withdraw his appearance as attorney for the guardian. Notice of this petition had been mailed to the respondent on September 4, 1962. A guardian *ad litem* was appointed to investigate the allegations of the petition. The report of the guardian *ad litem* disclosed the condition of the estate and the existence of the two insurance policies that had not been inventoried. A rule to show cause was issued, hearings were conducted and the judgment under review was entered.

The rule to show cause was returnable November 2, 1962. The respondent did not appear on that date. Later it was learned that she had given birth to a child on November 1, 1962, and was hospitalized. The hearing on the rule to show cause was continued to November 13, 1962. The contention that a sanity hearing was required was not raised in the trial court by the attorney who represented the respondent. As asserted now, it is based upon two statements made during the course of the proceedings. The first was made by an assistant state's attorney on November 9. He said: "The record will show that the reason why she failed to appear was that she was suffering from an emotional disturbance * * * and we were not given the information as to what hospital or where she was." The second statement was made by the guardian *ad litem* on November 13, at the outset of the hearing on the rule to show cause. He said: "I have come to the court, not only on behalf of the minor, but wish to relate for the father of Mrs. Stollar, who was on one former occasion before Judge Cooney, and

pleaded that Mrs. Stollar has been emotionally disturbed and upset and that some mercy should be given to her and that she should be examined and cared for by a psychiatrist." Both of these remarks must be appraised in the context of all that transpired before the court, and particularly in view of the desire of the respondent, expressed by her father, to keep the birth of the child from being a "public record." So appraised, we are of the opinion that they can not fairly be taken as indicating that anyone connected with the proceeding in the trial court thought that the mental condition of the respondent was such that a sanity hearing was indicated. The attorney who represented respondent there made no such suggestion, and the written motion for a new trial that he filed made no such claim.

The motion for a new trial, however, did assert that the defendant's constitutional rights were violated because the court refused to grant her sufficient time to prepare her defense and because the guardian *ad litem* misled the respondent into what amounted to a plea of guilty by the respresentation that he would recommend leniency. No request for a continuance was made before the hearing commenced. After the respondent had testified for some time, her attorney requested "a short continuance." The court immediately adjourned the proceedings until three o'clock in the afternoon. On the following morning, when her attorney asked for a continuance "to give me time to prepare my case," the request was denied.

At the outset of the hearing, the guardian *ad litem* represented to the court, in the presence of respondent and her attorney, that her attorney had agreed that if the record so warranted, he would "consent and agree to vacating the order of appointment of Mrs. Stollar as guardian. If there is a finding of fraud of both the inventory and the

current account, he is still willing to leave it up to the mercy of the court as to any judgment or punishment that Mrs. Stollar should receive." He then continued with the statement that has been quoted earlier in this opinion. The court inquired as to whether this statement was satisfactory to Mrs. Stollar and then announced that it was satisfactory both to her and to her attorney. Moreover, the plaintiff in error testified that she had voluntarily indicated that she was willing to inform the court of all that had occurred in the performance of her duties as guardian of the estate and to place herself on the mercy of the court. She testified that she was not coerced to do this and that the court had made no promise that the judgment and punishment of the court "will be any less than you should receive."

These circumstances do not, in our opinion, indicate that the respondent was prevailed upon by promises of leniency to testify concerning her management of her daughter's estate, or that the trial court erred in refusing a continuance after the hearing had commenced.

The respondent's contention that the sentence of 18 months exceeded the maximum permitted by statute is based upon that portion of section 1—7 of the Criminal Code of 1961 which provides, "The court in imposing sentence upon an offender convicted of an offense for which no penalty is otherwise provided may sentence the offender to a term of imprisonment not to exceed one year or a fine not to exceed $1,000, or both." (Ill. Rev. Stat. 1961, chap. 38, par. 1—7.) The respondent reads this provision as limiting the permissible sentence that may be imposed for contempt of court. But that it relates only to those offenses defined in the Code, and does not apply to contempt of court is, in our opinion, made clear by section 1—3: "No conduct con-

stitutes an offense unless it is described as an offense in this Code or in another statute of this State. However, this provision does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment, or decree." Ill. Rev. Stat. 1961, chap. 38, par. 1—3.

To establish the excessiveness of the sentence, considered not as a matter of law but in the light of the facts disclosed by the record, the respondent argues that the mishandling of her daughter's estate was not due to a conscious attempt to commit a theft, but was due rather to her belief that her daughter's money was indistinguishable from her money, and to her lack of business knowledge. The record shows, however, that she understoodd what she was doing. The agent for the insurance company that had issued the two policies payable to her daughter, which the respondent had concealed, testified that she offered him the sum of $2000 if he would see that the checks in payment of the policies were made payable to her individually rather than as guardian of her child's estate. She admitted this. In addition, in arranging for the transfer of other funds into an account from which she was able to withdraw without court approval, she executed false affidavits stating that certain bank books had been lost, when she knew they were in the possession of her attorney. This, too, she admitted. And to bring about the transfer of these deposits she hired a lawyer other than the attorney who represented her as guardian. In the light of these circumstances, we can not say that the trial court abused its discretion in imposing sentence.

The judgment of the probate court of Cook County is affirmed.

Judgment affirmed.

APPENDIX C

PROCEEDINGS IN TRIAL COURT

Petition For A Writ of Habeas Corpus

Now comes Gloria Stollar, Petitioner herein, and respectfully represents unto this Court as follows:

1. That she is imprisoned and restrained of her liberty in the custody of the Respondent, Richard B. Ogilvie, Sheriff of Cook County, Illinois, in the common jail of Cook County, Illinois;

2. That the cause or pretense of her restraint is a certain order of the Probate Court of Cook County, Illinois entered November 23, 1962, adjudging her guilty of contempt of court and sentencing her to the Cook County Jail for a term of eighteen months; further, that your petitioner is not committed nor detained by virtue of any process, judgment, decree or execution specified in section 21 of "An Act to revise the law in relation to habeas corpus." Approved March 2, 1874. R.S.1874, p. 565. Illinois Revised Statutes (1963), Chapter 65, §21, the time during which your petitioner may be legally detained having expired;

3. That a copy of the process under which your petitioner was committed is attached hereto; [omitted]

4. That the reason for the expiration of the time during which your petitioner could be legally detained is that she was tried in the Probate Court of Cook County for contempt of court in summary proceedings and summary trial in which she was not accorded the opportunity to be

tried by a jury; that the Sixth Amendment to the Constitution of the United States provides that "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed." This Amendment was made applicable to the States by *Gideon* v. *Wainwright,* 372 U.S. 335, 83 S. Ct. 792, 9 L.Ed. 2d 799; *Pointer* v. *Texas,* 380 U.S. 400, 85 S. Ct. 1065, 13 L.Ed. 2d 923; and *Douglas* v. *Alabama,* 380 U.S. 415, 85 S. Ct. 1074, 13 L.Ed.2d 934. In *United States* v. *Barnett,* 376 U.S. 681, 84 S. Ct. 984, ... L.Ed.2d ....., the Supreme Court of the United States indicated that without regard to the seriousness of the offense, punishment [of contempt of court] by summary trial without a jury would be constitutionally limited to that penalty provided for petty offenses, see also *Harris* v. *United States,* ..... U.S. ....., 85 S. Ct. 438 15 L.Ed.2d 240. In the Federal system, the maximum penalty for a petty offense is six months or a fine of not more than $500.00 or both. Title 18, U.S.C. §1. Therefore, so much of her sentence as exceeds six months is void and the six months having expired, your petitioner ought to be released.

Wherefore, your petitioner prays that writ of habeas corpus issue pursuant to the Statutes in such case made and provided, directed to the Sheriff of Cook County, Illinois, so that the said Gloria Stollar, Petitioner, may be forthwith brought before this Honorable Court and that upon the return of the writ, a day certain may be fixed for a hearing to an end that the legality of her custody and restraint may be inquired into and determined.

Motion to Dismiss

Now Comes Richard B. Ogilvie, Sheriff of Cook County, Illinois, espondent herein, by Daniel P. Ward, State's Attorney of Cook County, Illinois, his Attorney, and moves the Court to dismiss the petition for a Writ of Habeas Illinois, respondent herein, filed herein and alleges:

1. That Gloria Stollar, the relatrix, is in his custody by and under the authority of a contempt mittimus issued by the Probate Division of the Circuit Court of Cook County and that when said Court issued the said mittimus against the relatrix it had full jurisdiction of the subject matter, of the person of the relatrix and power to issue the particular mittimus.

2. That the causes for which a person held on process of court may be discharged from custody in the State of Illinois are enumerated in Chapter 65, Section 22 of the Illinois Revised Statutes 1963 and that the relatrix has failed to bring herself within any of the provisions of said statute and a person committed to jail for contempt of court cannot be discharged on habeas corpus. *Ex Parte Smith,* 117 Ill. 63; *Peo. ex rel Davis* v. *Foster,* 104 Ill. 156; *Peo. ex rel. Hinckley* v. *Pirfenbrink,* 96 Ill. 68.

3. Further answering respondent denies the allegations set forth in paragraph 4 of relatrix's petition and alleges that the laws and authorities cited therein are inapplicable to the said contempt proceedings had in the Probate Division of the said Circuit Court.

Wherefore, respondent prays that the petition for a Writ of Habeas Corpus heretofore filed herein be dismissed.

Order of Dismissal

And the Court hearing the Arguments of Counsel in support of said Petition for Habeas Corpus as well as the State's Attorney, Counsel for the Respondent in opposition thereto and the Court having inquired into the cause of the caption and detention of the said Relatrix Gloria Stollar, and being fully advised in the premises doth Sustain the Motion of the Respondent to Dismiss the foregoing entitled cause and doth further order that the Petition for Habeas Corpus be and the same is hereby Dismissed.

APPENDIX D

JUDGMENT ORDER OF THE SUPREME COURT OF ILLINOIS OF WHICH REVIEW IS SOUGHT

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Circuit Court of Cook County aforesaid, Be Affirmed In All Things And Stand In Full Force And Effect, notwithstanding the said matter and things therein assigned for error.

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OCTOBER TERM, 1966

No. 1273 89.

GLORIA STOLLAR,

Petitioner,

vs.

RICHARD B. OGILVIE, SHERIFF OF COOK COUNTY, ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT IN OPPOSITION.

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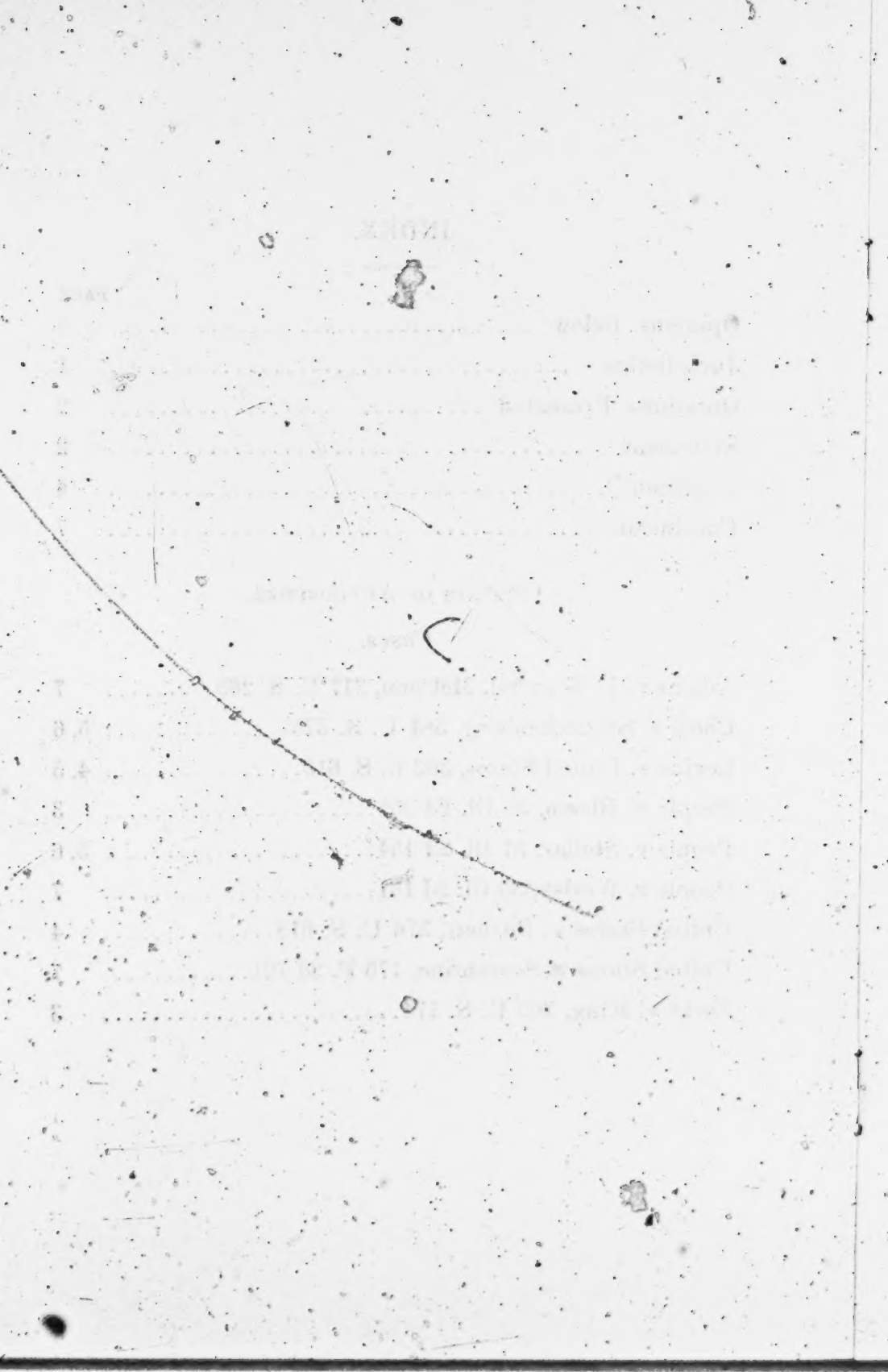
INDEX.

	PAGE
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statement	2
Argument	4
Conclusion	7

Citation of Authorities.

Cases.

Adams v. U. S. ex rel. McCann, 317 U. S. 269	7
Cheff v. Schnackenberg, 384 U. S. 373	5, 6
Levine v. United States, 362 U. S. 610	4, 5
People v. Bloom, 35 Ill. 2d 255	3
People v. Stollar, 31 Ill. 2d 154	5, 6
People v. Wesley, 30 Ill. 2d 131	7
United States v. Barnett, 376 U. S. 618	4
United States v. Sorrentino, 175 F. 2d 721	7
Zucht v. King, 260 U. S. 174	3



IN THE

Supreme Court of the United States

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GLORIA STOLLAR,

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Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT IN OPPOSITION.

OPINIONS BELOW.

The opinion of the Supreme Court of Illinois on the present habeas corpus proceeding is reported at 36 Ill. 2d 261, 222 N. E. 2d 496, and reprinted in Appendix A of the Petition. The opinion of the Supreme Court of Illinois on the original contempt appeal is reported at 31 Ill. 2d 154, 201 N. E. 2d 97, and is reprinted in Appendix B of the Petition.

JURISDICTION.

The jurisdiction of this Court is invoked by petitioner pursuant to 28 U. S. C. § 1257 (3).

QUESTIONS PRESENTED.

1. Is the right to trial by jury guaranteed by the Sixth Amendment to the United States Constitution applicable to a State Criminal contempt proceeding?

2. Assuming such applicability, does the failure of petitioner to request a trial by jury at any time during the proceedings constitute a waiver of any such right?

STATEMENT OF THE CASE.

A complete and comprehensive statement of facts has previously been submitted by respondent in his Brief in Opposition to a Petition for Certiorari which was denied by this Court (380 U. S. 912, 85 S. Ct. 898, 13 L. Ed. 2d 798), and Respondent respectfully requests the incorporation of such statement in the present proceeding.

With respect to petitioner's statement of the case, respondent deems it necessary to make several additions and clarifications. First, petitioner has failed to detail the fact that on April 12, 1965, a petition was filed on her behalf in the United States District Court, Northern District of Illinois, Eastern Division, under Title 28, United States Code, Section 2241 et seq., alleging violations of federal constitutional rights arising out of the original section of the then Probate Court of Cook County, Illinois in November, 1962 (65-C-561). Such petition, after a plenary hearing before Judge Igoe, was denied on June 30, 1965. A copy of findings of fact and conclusions of law, coupled with a judgment order is set forth in full in the Appendix to the brief in the Supreme Court of Illinois (Appellee's Brief, Supreme Court of Illinois, No. 39768). Secondly, at no time during the original contempt case did petitioner or her attorney request a trial by jury. (See Appendix A, Petition for Writ of Certiorari.) Thirdly,

while the Supreme Court of Illinois decided the instant cause based on the precedent espoused in *People* v. *Bloom*, 35 Ill. 2d 255, it is error to state that the latter court ignored the constitutional claims of petitioner presented there.

Finally, while petitioner now raises the constitutional claim of denial of equal protection under the Fourteenth Amendment to the United States Constitution, such claim was never presented at any other stage of the proceedings in this cause. Since the issue of equal protection was not properly raised in the state court proceedings, it is not considered a substantial or proper basis for the granting of the petition. (*Zucht* v. *King*, 260 U. S. 174.)

ARGUMENT.

I.

The Right to Trial by Jury Guaranteed by the Sixth Amendment to the United States Constitution Is Not Applicable to a State Criminal Contempt Proceeding.

In *Levine* v. *United States,* 362 U. S. 610, a majority of this Court held that the right of a public trial in all criminal prosecutions did not include proceedings involving criminal contempt of Court. It was there stated (p. 616):

> "Procedural safeguards for criminal contempts do not derive from the Sixth Amendment. Criminal contempt proceedings are not within 'all criminal prosecutions' to which that Amendment applies. *Ex parte Terry,* 128 U. S. 289, 306-310; *Cooke* v. *United States,* 267 U. S. 517, 534-535; *Offutt* v. *United States,* 348 U. S. 11, 14. But while the right to a 'public trial' is explicitly guaranteed by the Sixth Amendment only for 'criminal prosecutions,' that provision is a reflection of the notion, deeply rooted in the common law, that 'justice must satisfy the appearance of justice.' *Offutt* v. *United States,* 348 U. S. 11, at 14. Accordingly, due process demands appropriate regard for the requirements of a public proceeding in cases of criminal contempt, see *In re Oliver,* 333 U. S. 257, as it does for all adjudications through the exercise of the judicial power. . . ."

The reasoning of *Levine* has been extended, in succeeding years, to criminal contempt cases where the issue presented involved a constitutional claim for trial by jury. (*United States* v. *Barnett,* 376 U. S. 618.) Even when the Court recently subscribed to the doctrine of trial by jury in federal criminal contempt cases where sentence exceeded

six months, such rationale was bottomed, not upon a constitutional right, but upon the supervisory power over lower federal tribunals. (*Cheff* v. *Schnackenberg,* 384 U. S. 373.) To honor petitioner's claim in the instant cause would be to (1) make the Sixth Amendment right of trial by jury applicable to state criminal proceedings; (2) define a criminal contempt as a "criminal prosecution" within the meaning of the Sixth Amendment, and (3) overrule *Levine* v. *United States,* 362 U. S. 610, or at least the concept there enunciated, which expressly refused to embody the procedural safeguards of the Sixth Amendment in cases of criminal contempt.

It is the position of Respondent that the necessary action which must be taken to validate petitioner's claim would constitute a serious impediment to the inherent power of state court tribunals in the administration of justice.

II.

Assuming The Applicability of the Constitutional Right to Trial by Jury in a State Criminal Contempt Proceeding, Petitioner's Failure to Request a Jury Trial, and Her Contrary Actions At the Original Proceedings Constitute a Waiver of Such Right.

At the original contempt hearing on November 14, 1962, the petitioner made the following statements to the court at the inception of such proceeding:

(Abstract of Record, *People* v. *Stollar,* 31 Ill. 2d 154, 201 N. E. 2d 97, No. 37796, pp. 48-49; Transcript of Record, pp. 352-353.)

"My name in Gloria Stollar. I live at 4880 Marine Drive, Chicago, I am the same Mrs. Stollar who was appointed guardian of Jacqueline H. Stollar, a minor. That is my daughter. I have indicated to you and to my attorney and the court that I am willing to inform the court of all that has occurred in the performance

of my duties as guardian of this estate. I do this voluntarily and I am placing myself at this time at the mercy of the court as to this court's judgment as to what punishment, if any, I should receive, and I promise now to testify to the best of my ability. No one is coercing me to do this. The court has not made any promise that judgment and punishment of this Court will be any less than what I should receive." (Abstract of Record attached as Exhibit A.)

Furthermore, this Court, in setting forth the statement of facts in the case of *People* v. *Stollar,* 31 Ill. 2d 154, stated (p. 158):

"At the outset of the hearing, the guardian ad litem represented to the court, in the presence of respondent and her attorney, that her attorney had agreed that if the record so warranted, he would 'consent and agree to vacating the order of appointment of Mrs. Stollar as guardian. If there is a finding of fraud of both the inventory and current account, he is still willing to leave it up to the mercy of the court as to any judgment or punishment that Mrs. Stollar should receive.' . . . The court inquired as to whether this statement was satisfactory to Mrs. Stollar and then announced that it was satisfactory to both her and her attorney. Moreover, the plaintiff in error testified that she had voluntarily indicated that she was willing to inform the court of all that had occurred in the performance of her duties as guardian of the estate and to place herself on the mercy of the court. She testified that she was not coerced to do this and that the court had made no promise that the judgment and punishment of the court 'will be any less than you should receive'."

In light of the posture of the record, it is clear that petitioner has validly and of her own volition, waived the constitutional right which she now directs this court to honor. (*Cheff* v. *Schnackenberg,* 384 U. S. 373.)

It has long been established that the State and Federal Constitutional requirements of a jury trial is not jurisdic-

tional, but is a privilege which a defendant may waive with the consent of the court, provided the waiver is expressly, intelligently, and understandingly made. (See *Adams* v. *U. S. ex rel McCann,* 317 U. S. 269; *United States* v. *Sorrentino,* 175 F. 2d 721, involving waiver of other Sixth Amendment rights under the established standards: Also, *People* v. *Wesley,* 30 Ill. 2d 131.)

The petitioner's actions at the original hearing, and the statements of her attorney, in which she not only acquiesced, but expressly approved, lend substantial support to the proposition that an express, intelligent and understanding waiver of a right to trial by jury was made by her.

CONCLUSION.

Respondent respectfully requests that the petition for writ of certiorari be denied.

Respectfully submitted,

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